

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000726 / Case Ref No: 0414-11775

Appellant Tenant:	Emmanuel Eke
Respondent Landlord:	Diarmuid Coughlan
Address of Rented Dwelling:	12 Manorfields Drive, Clonee , Dublin 15
Tribunal:	Aidan Brennan (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	08 September 2014 at 10:30
Attendees:	Diarmuid Coughlan & Ilona Borysewicz - Tribunal Respondent Landlords Emmanuel Eke - Tribunal Appellant Tenant Pat Coughlan - Witness for Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 25/04/2014 the Landlords made an application to the Private Residential Tenancies Board (PRTB) pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 29/05/2014.

In relation to the dwelling at 12 Manorfields Drive Clonee Dublin 15, the Adjudicator determined that the notice of termination dated the 13th day of February 2014 is valid and that the Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 7 days of the date of issue of the Order.

Subsequently the following appeals were received:

Tenant: received on 30/06/2014. The grounds of the appeal: Rent arrears and invalid notice of termination; Approved by the Board on 18/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Thomas Reilly and Vincent P Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aidan Brennan to be the chairperson of the Tribunal (the Chairperson).

On 5 August 2014 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 8 September 2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood the PRTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson said that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. (Parties giving evidence were sworn in.)

The Chairperson reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Tenants case:

Evidence of Mr Emmanuel Eke

The appellant tenant gave evidence that he was in arrears of rent at the 5 August 2014 of €268, but that a payment was made but not marked up in the rent book. Later evidence from the landlord indicated that the payment against the arrears was €20 leaving the arrears figure at €248.

The appellant gave further evidence to the effect that he was doing everything possible to get out of the dwelling and secure accommodation elsewhere. He outlined the difficulties which he encountered such as the unwillingness of landlords to participate in the rent assistance scheme and his inability to raise finance to fund the move. He has been on a Local Authority housing list for approximately eight years but despite the fact that he is married with five dependent children, two of whom are in university, the Local Authority

can do little or nothing for him at the present time. He could not give any evidence to show that the notice of termination, giving rise to his appeal, was in any way invalid or defective. He indicated that the purpose of his appeal was to gain time in order to secure alternative accommodation.

Respondent Landlords' case:

Evidence of Mr Diarmuid Coughlan

Mr. Coughlan gave evidence of the several attempts he had made to obtain vacant possession of the dwelling, over a lengthy period, including the previous service of an invalid notice of termination and a previous Tribunal Hearing. A PRTB Determination Order had dealt with matters up to the 30 September 2013, which included the period during which the arrears of €248, now admitted by the tenant, accrued. No further rent arrears have accrued since the 30 September 2013. When asked by the Tribunal whether he was prepared to give further time to the appellant to facilitate a move, Mr. Coughlan replied in the negative saying that he needed vacant possession so that Ms. Borysewicz the co-owner and co-landlord could move in to the dwelling.

Evidence of Ms Ilona Borysewicz

Ms. Borysewicz gave evidence to the effect that she wished to move into the property (12 Manorfields Drive) together with her partner and two children. She is under notice to vacate the rented dwelling which she currently occupies and that gives certain urgency to the matter.

6. Matters Agreed Between the Parties

The parties were in agreement as to when the tenancy commenced 11 September 2011, the amount of the monthly rent €1,100 subsequently reduced to €900 on 26 April 2012, the amount of the deposit in the landlords possession €1,100; that there are rent arrears of €248 which were the subject of a previous Tribunal Hearing; that a notice of termination had been served and that the appellant and his family are in occupation of the dwelling at the date of the Tribunal hearing.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons are set out hereunder.

Finding 7(1)

The notice of termination served on the 13th February 2014 is valid as it complies with the relevant provisions of the Residential Tenancies Act and in particular section 34. The notice terminated the tenancy on the 12th April 2014, the tenant who is overholding, must quit the dwelling on foot of that notice.

Reason

The respondent landlords provided an undisputed account of why they required possession of the dwelling. The notice of termination dated 13 February 2014 is valid in circumstances where it complies with all the requirements of section 62 of the Residential Tenancies Act 2004 to 2009. Further, the notice of termination contains the correct notice period of at least 56 days as provided by section 66 of the Residential Tenancies Act

2004 to 2009. The respondent landlords have also complied with the requirement of part 4 of the table under section 34 of the Act. As the Notice of Termination is valid, the appellant tenant is overholding at the dwelling and must vacate the dwelling in line with the relief sought by the landlord under section 115(2) e of the Act.

The admitted rent arrears accrued in a period which was the subject of a previous Determination Order which upheld the tenants appeal at that time. Accordingly the matter of the rent arrears, now admitted by the tenant, should not be revisited by the Tribunal.

8. Determination:

Tribunal Reference TR0614-000726

In the matter of Emmanuel Eke (Tenant) and Diarmuid Coughlan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on 13th February 2014, by the Respondent Landlords on the Appellant Tenant, in respect of the tenancy of the dwelling at 12 Manorfields Drive Clonee, Dublin 15 is valid.
2. The Appellant Tenant, and any other persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 7 days of the date of issue of this Order.
3. The Appellant Tenant shall pay any rent outstanding from the 8th September 2014 at the rate of €900 per month unless lawfully varied and any other charges as set out in the terms of the tenancy agreement, for each month or part thereof, until such time as he vacates the above dwelling.
4. The Respondent Landlords shall refund the entire of the security deposit of €1,100 to the appellant tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 19/09/2014.

Signed:



Aidan Brennan Chairperson

For and on behalf of the Tribunal.